DETERMINATIONS AND FINDINGS
AUTHORITY TO EXCLUDE A SOURCE

1. **CONTRACTING AGENCY:** Office of the Assistant Secretary of Defense, Health Affairs, TRICARE Management Activity (TMA), Acquisition Management & Support (AM&S), Aurora, Colorado.

2. **DESCRIPTION OF ACTION BEING APPROVED:** TMA intends to issue a single solicitation for the next generation of TRICARE Managed Care Support Contracts (MCSCs). The acquisition will replace the current seven fixed price MCSCs with three contract awards that will combine cost-plus-incentive-fee (CPIF) and fixed price (FP) contract types. Each contractor will be responsible for performing all administrative services attendant with, and financially underwriting, the delivery of health care to eligible uniformed services beneficiaries (active duty service members and their families, retirees and their families, and family member survivors) within the particular region. The basic contract will involve a start-up period during which the contractor will establish, staff, and test all administrative systems in preparation for delivery of health care. The contract will also include five 1-year option periods during which health care will actually be delivered to, and paid on behalf of, eligible beneficiaries. The estimated value of the contracts . for the base period plus five option years.

   In order to foster an adequate number of viable contractors to ensure continuous availability of health care services for our military beneficiaries, TMA will be authorized to conduct a full and open competition after exclusion of sources pursuant to 10 U.S.C. 2304 (b)(1)(D). Any offeror will be permitted to compete for one, two, or all three contracts; however, no contractor will be awarded more than one contract. The selection of three different contractors will occur even if one contractor submits the best proposal for each of the three areas. This will ensure against the loss of existing critical health care skills by contractor personnel presently working in the TRICARE program. The approach is further authorized by 10 U.S.C. 1073a. which requires that TRICARE contractors be selected that will provide the "best value to the United States to the maximum extent consistent with furnishing high quality health care in a manner that protects the fiscal and other interests of the United States."

3. **STATUTORY AND REGULATION AUTHORITY PERMITTING FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES:** 10 U.S.C. 2304 (b) (1) (D), as implemented by FAR 6.202(a)(4), permits full and open competition after exclusion of sources when it is necessary to ensure the availability of a reliable source of supply of services.

4. **FINDINGS:** Approval of authority to conduct a full and open competition after exclusion of sources is based on the following findings:

   Currently four contractors are performing the seven contracts covering twelve U.S. geographical regions. TMA will realign those twelve regions into three regions and award a

contract for each of the newly defined regions. Three contracts and geographical regions have been determined to be the optimum number to provide efficient and cost-effective contract administration by DoD while providing efficiencies and economies of scale for contractor performance. Reducing the number of contracts administered by TMA and the number of health care regions requiring region-wide health care planning and operational coordination between military health care facilities and MCSCs will reduce DoD's resource expenditures for redundant administrative costs associated with seven identical contracts and twelve regional management structures.

Award of three contracts is necessary based on evaluation of existing capabilities in the commercial sector. For example, Medicare data for 1999 (HCFA Pub. No. 03421) reveals that the world's largest health care claims program (848 million annual claims) used 65 different contractors to accomplish the work, with an average of about 13 million claims processed per contractor. Approximately 50 million TRICARE claims will be processed annually under the three proposed MCSCs, or approximately 16.7 million claims per contractor. It is an unacceptable risk to stability in program administration to award less than three contracts and thereby significantly increase the volume of claims (almost double with two contractors) generally processed by individual contractors within the commercial sector.

Award of three contracts is also consistent with the capabilities of the commercial sector based on the "number of covered lives" to be included in each TRICARE contract. The "number of covered lives" relates to a health insurance industry concept that looks at a health care company's equity at risk and expected workload per individual beneficiary covered by a health care plan or policy. The number of covered lives per proposed TRICARE contract and region is roughly equivalent to any major health insurer's book of business. Significantly increasing a book of business (i.e., including substantially more covered lives under fewer contracts) is a high-risk proposition for the Government and could only be accomplished with intense and costly oversight and management through Government contract administration.

Past government experience has shown that an MCSC can be overwhelmed by the sheer size and demands for healthcare by the beneficiaries eligible for this statutory entitlement program. Current staffs of existing contractors are considered inadequate to administer the entire geographical area to be covered by the three intended awards. Based upon Government experience, including work with the current four contractors, three contracts for three regional areas provides optimum competition among responsible offerors and reduces government overhead presently administering seven contracts.

The solicitation will award contracts mandating a formula for determining the health care target costs for option periods in the event that the contract parties are unable to reach agreement on a target cost by negotiation. Actual TRICARE health care costs experienced nationwide for one year will be a factor in the formula for setting target costs in the subsequent option year. With three different contractors, it is less likely that any one will be able improperly to influence the target cost for a subsequent year. However, if a contractor were to have more than one region, that contractor's performance in managing health care costs would be given significantly more weight under the formula thereby reducing and/or

eliminating any advantages gained from a national trend factor. This factor is best controlled by having three contractors, with no one contractor having more than one-third influence on the national trend factor.

On balance, then, reducing the current seven MCSCs to three contracts will result in more efficient and cost-effective contract administration by DoD; however, reducing the number of contracts below three is not appropriate for efficiencies and economies of scale as reflected by the commercial sector's largest claims processing contractors or major health insurers' books of business.

TRICARE is a unique statutory entitlement program that requires contractors to financially underwrite the delivery of health care for an unenrolled beneficiary population and under which contractors are required to deliver health care through civilian health care providers only when such health care is not otherwise determined to be available through military health care facilities. Although many of the administrative functions are similar to commercial health plans, specific requirements under the TRICARE MCSC are not consistent with commercial type health care plans or insurance and, therefore, no readily available alternative contractor generally exists (outside those contractors actually performing TRICARE MCSCs) to respond rapidly to the Government's requirements to avoid disruption in the delivery of critical health care under a statutory entitlements program.

In view of the unique nature of the TRICARE requirement, serious program execution and financial risks exist in the absence of maintaining alternative sources. Disruption in the delivery of health care to active duty service members and their families will seriously reduce and harm our military preparedness due to personal concerns of active duty members for the health of their family and themselves. If occurring during a time of national emergency, it could significantly threaten the security of the United States. TRICARE is a statutory entitlement program under which there can be no lapse in program execution or interruption of services. Having less than 3 contractors creates an unacceptable risk to stability in program administration and the continuous delivery of crucial health care.

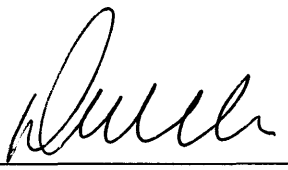
In view of the statutory requirement that TRICARE MCSCs financially underwrite the delivery of health care, spreading the financial risk for underwriting multi-billion dollar annual health care costs among several contractors is prudent. Relying on the continued financial viability of only one or two contractors under current market conditions and the extraordinary financial difficulties experienced by major companies is an unnecessary risk to program administration, predictability in DoD's annual health care budget, and continued viability of the TRICARE program.

FAR 6.202(a)(4) permits agencies to exclude particular sources from a contract action in order to establish alternative sources, to ensure the continuous availability of a reliable source for services, or to satisfy a critical need for medical or emergency supplies. While difficulties may be encountered, the ready availability of alternative contract sources will facilitate stability in administration of the statutory entitlement program, help avoid unnecessary disruption in health care provider and patient relationships, and minimize -- during any substitute performance stage -- the high training cost in terms of money and other resources

generally experienced by a new contractor and the government during contract start-up. Having alternative contract sources will best insure continuation of critical health services in the event of a national emergency throughout the period of the contracts.

If one of the contractors is later unable to substantially perform, the government will consider other options, including substituting contract performance by one or both of the other contractors pending competitive acquisition of a successor, and thus minimize the risk of unacceptable disruption to providing the continuation of critically needed healthcare services when they are most needed. The need to have likely alternative sources available justifies the determination that a contractor selected for one of the three contracts will not be considered eligible for either of the remaining contracts.

DETERMINATION: In accordance with 10 U.S.C. 2304(b) (1) (D) and FAR 6.202(a)(4), it is my determination that the solicitation for the TRICARE next generation of Managed Care Support Contracts may be awarded using full and open competition after exclusion of any one contractor from being awarded more than one contract under the solicitation. The selection of three different contractors will occur even if one contractor submits the best proposal for each of the three TRICARE regions. This will ensure against the loss of existing critical health care skills by contractor personnel presently working in the TRICARE program. This determination is consistent with 10 U.S.C. 1073a. which requires that TRICARE contractors be selected that will provide the "best value to the United States to the maximum extent consistent with furnishing high quality health care in a manner that protects the fiscal and other interests of the United States."



JUL 31 2002

Deidre A. Lee
Director, Defense Procurement

Date